

# Exhibit 12

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,	)	CASE NO: 2:13-CV-00193
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Corpus Christi, Texas
	)	
RICK PERRY, ET AL.,	)	Wednesday, March 5, 2014
	)	
<u>Defendants.</u>	)	(9:27 a.m. to 11:16 a.m.)

MOTION HEARING

BEFORE THE HONORABLE NELVA GONZALES RAMOS,  
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Genay Rogan
Clerk:	Brandy Cortez
Court Security Office:	Adrian Perez
Transcriber:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

APPEARANCES FOR:

Plaintiffs:

ARMAND DERFNER, ESQ.  
P. O. Box 600  
Charleston, SC 29402

CHAD W. DUNN, ESQ.  
K. SCOTT BRAZIL, ESQ. (Phone)  
Brazil and Dunn  
4201 Cypress Creek Parkway  
Suite 530  
Houston, TX 77068

J. GERALD HEBERT, ESQ. (Phone)  
191 Somerville Street  
#405  
Alexandria, VA 22304

NEIL G. BARON, ESQ.  
914 FM 517 Road, W.  
Suite 242  
Dickinson, TX 77539

EMMA SIMPSON, ESQ. (Phone)  
TERESA GUERRA SNELSON, ESQ. (Phone)

United States  
of America:

ANNA BALDWIN, ESQ.  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
NWB 7273  
Washington, DC 20009

ELIZABETH S. WESTFALL, ESQ. (Phone)  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
NW NWB 7125  
Washington, DC 20530

DANIEL J. FREEMAN, ESQ.  
U.S. Department of Justice  
950 Pennsylvania Ave. NW  
NWB 7123  
Washington, DC 20009

APPEARANCES FOR (Cont'd):

United States of America:	JOHN ALBERT SMITH, III, ESQ. Office of the U.S. Attorney 800 N. Shoreline Boulevard Suite 500 Corpus Christi, TX 78401
Texas Association of Hispanic County Judges and County Commissioners:	ROLANDO L. RIOS, ESQ. 115 E. Travis Suite 1654 San Antonio, TX 78205
Oscar Ortiz, et al.:	PRESTON E. HENRICHSON, ESQ. (Phone) 222 W. Cano Edinburg, TX 78539
State of Texas:	JOSE GARZA, ESQ. 7414 Robin Rest Dr. San Antonio, TX 78209
	JOHN BARRET SCOTT, ESQ. Scott, Yung, L.L.P. 208 N. Market Street Suite 200 Dallas, TX 75202
	JOHN REED CLAY, JR., ESQ. S. RONALD KEISTER, ESQ. (Phone) Office of the Attorney General P. O. Box 12548 MC001 Austin, TX 78711-2548
	DAVID WHITLEY, ESQ.
Texas League of Young Voters Education Fund:	RYAN HAYGOOD, ESQ. NATASHA KORGAONKAR, ESQ. NAACP Legal Def and Educational Fund, Inc. 40 Rector Street 5th Floor New York, NY 10006
	M. HASAN ALI, ESQ. (Phone) Wilmer Cutler Pickering, et al. 1875 Pennsylvania Ave. NW Washington, DC 20006

APPEARANCES FOR (Cont'd):

Mexican American  
Legislative Caucus,  
et al.:

EZRA D. ROSENBERG, ESQ.  
Dechert, LLP  
902 Carnegie Center  
Suite 500  
Princeton, NJ 08540-6531

DANIEL COVICH, ESQ.  
GARY BLEDSOE, ESQ. (Phone)

VISHAL AGRAHARKAR, ESQ. (Phone)  
Brennan Center for Justice  
NYU School of Law  
161 Avenue of the Americas  
12th Floor  
New York, NY 10013

Texas State Conference  
of NAACP Branches:

ERANDI ZAMORA, ESQ.  
MARK A. POSNER, ESQ. (Phone)  
Lawyers' Committee of Civil Rights  
Under Law  
1401 New York Ave., Suite 400  
Washington, DC 20005

Corpus Christi, Texas; Wednesday, March 5, 2014; 9:27 a.m.

(Call to Order)

(Courtroom and Telephonic Appearances)

**THE COURT:** Court calls Cause Number 2:13-193,  
*Veasey, et al, versus Perry, et al.*

We'll start with the plaintiffs, if, I guess, counsel  
representing Veasey and LULAC plaintiffs -- go ahead.

**MR. DUNN:** Good morning, your Honor.

**THE COURT:** You're over here. You were there last  
time.

**MR. DUNN:** Yes. I've somehow or another switched  
around. My name is Chad Dunn. I'm -- here with me in the  
courtroom is Armand Derfner, Teresa Guerra Snelson, and Neil  
Baron. We also have Gerry Hebert and Emma Simpson on the  
telephone.

**THE COURT:** Okay. You're going to be speaking today?

**MR. DUNN:** Yes, on -- principally, yes, Judge.

**THE COURT:** All right. Government, The United States  
of America?

**MR. FREEMAN:** Good morning, your Honor.

**THE COURT:** Morning.

**MR. FREEMAN:** Dan Freeman on behalf of the United  
States. With me in the courtroom are my colleagues, Anna  
Baldwin and John Smith, and on the phone are a host of others.

**THE COURT:** Okay.

1 *Redmond* establish that there is no -- that any comity interest  
2 that might support a state legislative privilege simply is  
3 overcome by an important federal interest, such as federal  
4 criminal prosecutions. And that doctrine is not limited to  
5 federal prosecutions and should certainly apply in an important  
6 context such as this. And, as a result, the United States is  
7 not aware of any case in which a court has declined to provide  
8 documents to the United States when the United States has  
9 brought a Section 2 case, and it is not aware of any case in  
10 which a court has issued a blanket prohibition on production of  
11 internal legislative documents even when there are private  
12 plaintiffs who have brought the suit. The court has at least  
13 required the production of some documents in all of the cases  
14 of which the United States is aware.

15 **THE COURT:** And I think that's where the issue is;  
16 what documents.

17 **MR. FREEMAN:** Well, your Honor, there are a few  
18 different approaches that courts have taken. In some cases,  
19 such as *Perez*, the court has required a full production under  
20 seal. In other cases, such as *Favors v. Cuomo*, the court has  
21 undergone an in-camera review. However, that in-camera review  
22 is still ongoing after over a year. And, so, under this  
23 Court's schedule, the United States believes that if this Court  
24 only thinks that a subset of documents are relevant,  
25 unfortunately, it's not really possible from defendant's

1 privilege logs to identify exactly which documents are the most  
2 appropriate, as they're all relevant, and the privilege log  
3 merely establishes that they are internal to the legislature.

4 And, so, likely the best procedure would be a production under  
5 seal, as the -- as the Court carried out in *Perez*, and if the  
6 parties want to introduce those documents in court, we could  
7 subsequently discuss individual documents, and there would be  
8 no negative effect on the legislature, as the documents would  
9 be produced either subject to the protective order that's  
10 already in place or under seal.

11 **MR. CLAY:** Well, I think all of this kind of gets to  
12 the point of that we've put the cart before the horse here.  
13 We're talking in broad strokes about a legislative privilege  
14 and -- and about the amorphous contours of that privilege. But  
15 we don't have -- if we had gone about this the correct way,  
16 which is subpoenaing various legislators or the Attorney  
17 General's office with respect to specific documents, we might  
18 be in a better position to discuss the actual contours and  
19 whether a particular document is or is not subject to a  
20 privilege.

21 **THE COURT:** Okay. Well, let me just say; the ones  
22 that have waived the privilege, I don't need to deal with them  
23 at all. Correct?

24 **MR. CLAY:** That's correct.

25 **THE COURT:** They're going to provide whatever needs



1 attorney here, it's just an attorney was copied; or there is  
2 not an attorney relationship here. You all haven't discussed  
3 those documents?

4 **MR. CLAY:** No. They did not -- they have not brought  
5 up any individual documents which they believe are -- are --

6 **THE COURT:** Isn't that the way this works, that you  
7 all -- Government needs to point out to them why these  
8 documents are not based on your privilege log, why these are  
9 not protected by the privilege?

10 **MR. FREEMAN:** If I may, your Honor, the United States  
11 raised two specific category -- two specific instances in the  
12 privilege logs that clearly addressed policy matters. There  
13 were policy memos contained within the speaker's office, and I  
14 believe within the lieutenant governor's office there was --  
15 there were e-mails addressing polling data. However, in most  
16 cases the privilege logs are not sufficiently specific for the  
17 United States to be able to determine whether or not they  
18 address --

19 **THE COURT:** Okay. Have you all sat down and talked  
20 about that? Look, these documents here, clearly not covered;  
21 you've given defendants a chance to look at that. These  
22 documents, I'm not clear on what this is, to determine if there  
23 is a privilege.

24 **MR. FREEMAN:** Your Honor --

25 **THE COURT:** Because if you can't do it, I certainly